



Janet Napolitano
Governor

Victor M. Mendez
Director

ORIGINAL
NEW APPLICATION
Arizona Department of Transportation

Office of the Director
206 South Seventeenth Avenue Phoenix, Arizona 85007-3713



0000003311

Debra R. Brisk
Deputy Director

May 13, 2004

Arizona Corporation Commission

DOCKETED

MAY 20 2004

Railroad Safety Supervisor
Arizona Corporation Commission
1210 West Washington
Phoenix, Arizona 85007

RE: TRACS No. 0940 MA PHX SR174 01C

Project No. STP-000-6(155)P

RAIL/HIGHWAY SAFETY PROGRAM

36th Avenue (Phoenix)

The Burlington Northern and Santa Fe Railway Company

AAR/DOT No: 025-496-G

DOCKETED BY

CR

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 MAY 20 A 8:25

RECEIVED

Dear Mr. Thompson:

RR-02635B-04-0375

Please furnish our office with an Opinion and Order to cover the installation of Signals described in the subject agreement. An agreement covering the work has been signed by the Railroad Company. A copy is attached for your information and files.

After we receive the Opinion and Order, we will send you a copy of our letter authorizing the Railroad to proceed with the work.

Sincerely,

John Syers

John Syers, Railroad Engineering Coordinator
Utility & Railroad Engineering Section
205 South 17th Ave, RM 357, MD 618E
Phoenix, AZ 85007-3212
(602) 712-7541

Attachment



2001 Award Recipient



Jane Dee Hull
Governor

Mary E. Peters
Director

Arizona Department of Transportation

Intermodal Transportation Division
Utility & Railroad Engineering Section
205 S. 17th Ave. Mail Drop 618E Phoenix, Arizona 85007
Phone 602.712.7541 Fax 602.712.3229

Dick Wright
State Engineer

June 15, 2001

RAILROAD CROSSING PROJECT

TRACS No.: 0940 MA PHX SR174 01C
Project No.: STP-000-6(155)P
Location: 36th Avenue
AAR/DOT No.: 025-496-G
ADOT Accounting No.: R1531BW01

RAILROAD AGREEMENT

For
FEDERAL AID
Railroad Crossing Projects

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
Agreement No. 1531-91-ATSF
RAIL/HIGHWAY SAFETY PROGRAM

SUMMARY OF ESTIMATE

	ADOT	ACC	Total
	@94.3%	@5.7%	
Preliminary Engineering:	\$5,658.00	\$342.00	\$6,000.00
Construction:			
Signals	<u>\$125,348.00</u>	<u>\$7,577.00</u>	<u>\$132,925.00</u>
	<u>\$131,006.00</u>	<u>\$7,919.00</u>	<u>*\$138,925.00</u>

* Railroad will invoice ADOT for 100% of total work.
Railroad will separate Preliminary Engineering costs
from Construction costs. ADOT will pay Railroad
100% of total invoice and invoice ACC for its portion.

TRACS No. 0940 MA PHX SR174 01C
Project No. STP-000-6(155)P
Agreement No. 1531-91-ATSF
EXHIBIT "A"
Sheet 1 of 3

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF ARIZONA

LOCATION - PHOENIX

DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION

INSTALL STYLE "C" TRACK CIRCUIT, FLASHERS WITH GATES AT 36TH AVE. IN PHOENIX, AZ.
ARIZONA DIV., PHOENIX SUBDIV., L/S 7208, MP 0.33, DOT 025496G

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.

CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

***** SIGNAL WORK ONLY *****

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

PLACE FIELD WELDS	104.64	MH	2,054	
PLACE OTM	52.32	MH	974	
SIGNAL FIELD LABOR	672.00	MH	15,569	
SIGNAL SHOP LABOR	64.00	MH	1,302	
PAYROLL ASSOCIATED COSTS			13,514	
EQUIPMENT EXPENSES			4,220	
SUPERVISION EXPENSES			11,898	
INSURANCE EXPENSES			2,984	
TOTAL LABOR COST			52,515	52,515

MATERIAL				

JOINT, 136 LB POLY INSL : NEW	6.00	EA X	1,120	
WELD, KIT, GENERIC FOR ALL RAIL WEIGHTS	12.00	KT	684	
AC TRACK CIRCUIT	2.00	EA N	5,000	
BATTERY	1.00	LS N	3,681	
BUNGALOW 6X6	1.00	EA N	5,190	
BUNGALOW MATERIAL	1.00	LS N	5,603	
CABLE	1.00	LS N	1,337	
CHARGERS	1.00	LS N	880	
CONDUIT, PVC' 4 IN	60.00	FT N	114	
COST ADJ FOR LED LIGHTS	8.00	LS N	1,840	
FIELD MATERIAL	1.00	LS N	5,015	
FOUNDATIONS	2.00	EA N	400	
GATE KEEPER	2.00	EA N	3,200	
GATE MECH. MODEL 95	2.00	EA N	10,756	
MATERIAL FOR ELECTRICAL	1.00	EA	1,500	
RTU-6, CELLULAR MONITOR	1.00	EA N	2,050	
SIGNS, STOP	3.00	EA N	603	
SPARE & MISC. MATERIAL	1.00	LS N	2,000	
VIGILANT RECORDER	1.00	EA N	1,566	
STORE EXPENSES			80	
USE TAX			2,683	
OFFLINE TRANSPORTATION			654	
TOTAL MATERIAL COST			55,956	55,956

OTHER				

AC POWER SERVICE	1.00	EA	1,000	
CONTRACT ENGR.	1.00	EA N	6,000	
DIRECT SHIPPING	1.00	EA N	4,236	
EQUIPMENT RENTAL	1.00	EA N	5,460	

TRACS No. 0940 MA PHX SR174 01C
Project No. STP-000-6(155)P
Agreement No. 1531-91-ATSF
EXHIBIT "A"
Sheet 2 of 3

FILL DIRT
SURFACE ROCK

10.00 CY N
10.00 CY N

250
250

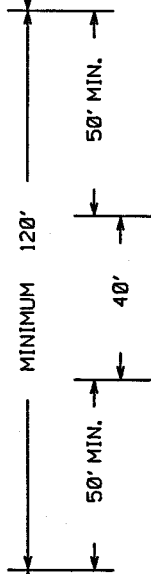
TOTAL OTHER ITEMS COST	17,196	17,196
PROJECT SUBTOTAL		125,667
CONTINGENCIES		12,566
BILL PREPARATION FEE		692
GROSS PROJECT COST		138,925
LESS COST PAID BY BNSF		0
TOTAL BILLABLE COST		138,925

TRACS No. STP SW VAR SR174 01C
Project No. STP-000-6(155)P
Agreement No. 1531-91-ATSF
EXHIBIT "A"
Sheet 3 of 3

TO: END OF TRACK

The Burlington Northern & Santa Fe Railway Company

TO: PHOENIX

EASTWARD APPR.
10 MPHWESTWARD APPR.
10 MPH

20'



AC TRACK CIRCUIT

AC TRACK

CIRCUIT

36TH AVE.
MP 0.33

INSTALL: GATES & FLS

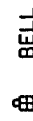
CONTROL DEVICES: **STYLE 'C'****BOLD = IN**~~SLASH~~ OUT

SALVAGE: NONE

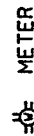
TRACS No. STP SW VAR SR174 01C
 Project No. STP-000-6(155)P
 Agreement No. 1531-91-ATSF
EXHIBIT "B"
 Sheet 1 of 1



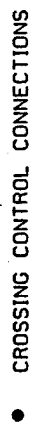
INSTRUMENT HOUSE



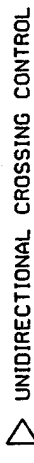
BELL



METER



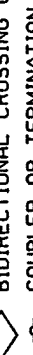
CROSSING CONTROL CONNECTIONS



UNIDIRECTIONAL CROSSING CONTROL



BIDIRECTIONAL CROSSING CONTROL



COUPLER OR TERMINATION



GUARD RAIL

BNSF RAILWAY CO.

ESTIMATE SKETCH

DIVISION: ARIZONA
SUBDIVISION: PHOENIX

L.S.: 7208 M.P.: 0.33

36TH AVENUE
CITY OF PHOENIX, AZ.

DOT NO.: 025 496 G

DDS: KANSAS CITY
NO SCALE

DATE: 05-23-01

FILE: 7208000_33.dgn

Warning device placement:
 Clearance to C.L. Track = Min. 12', Max. 20'
 Edge of Road to C.L. Foundation:
 Min. 4' with curb.
 Max. 8' without curb, Max. 12'
 25' Min. to C.L. of Track
 House Clearance:
 30' Min. to Edge of Road
 Front Lights:
 30-15 Degree Lenses
 Back and Side Lights: 70 Degree Lenses
 Cantilever Jury Mast: 20-30 Degree Lenses

**STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

Agreement No. 1531-91-ATSFAgreement Addendum No. 1Company's Name ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANYAddress 740 E. Carnegie Drive, San Bernardino, CA 92408-3571

Company hereby agrees to modify the existing referenced agreement and to do the work hereinafter set forth for Department of Transportation in accordance with the original agreement, the modified provisions of this form and of the attached sheets, if any, and Company agrees to receive and accept as full compensation therefor the payment provided in the agreement as modified herein.

WHEREAS: Paragraph 3. of Agreement No. 1531-91-ATSF states:

It is agreed that the work to be performed by RAILROAD is a part of Federal-Aid project. Pursuant to the provisions of Federal-Aid Policy Guide, Subchapter G, Part 646, Subpart B, there is no ascertainable net benefit to RAILROAD, and STATE agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred by RAILROAD in the furnishing of materials and performing work of the installing surfacing, and for ninety percent (90%) of the cost and expense incurred in the furnishing of materials and performing the work of installing SIGNALS as described in the "Summary of Estimate", marked EXHIBIT "A", attached to and made a part hereof. Pursuant to A.R.S. Subsection §40-337.02, the remaining ten percent (10%) of cost of furnishing and installing SIGNALS shall be billed directly against the Arizona Corporation Commission.

WHEREAS: Paragraph 3. of Agreement 1531-91-ATSF is revised as follows:

It is agreed that the work to be performed by RAILROAD is a part of a Federal-Aid project. Pursuant to the provisions of Federal-Aid Policy Guide Subchapter G, Part 646, Subpart B, there is no ascertainable net benefit to RAILROAD, and STATE agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred by RAILROAD in furnishing of materials and performing work as described in the "Summary of Estimate", marked EXHIBIT "A", attached to and made a part hereof.

THEREFORE: The parties hereto agree that Paragraph 3. of Agreement 1531-91-ATSF is hereby amended as shown herein. All other provisions of Agreement No. 1531-91-ATSF shall remain unabrogated.

The Department of Transportation hereby agrees to the terms as above set forth, and hereby agrees to pay same: provided, that by mutual consent this agreement may be modified or terminated at any time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARIZONA DEPARTMENT OF TRANSPORTATION

By William R. Briscoe

WILLIAM R. BRISCOE, P.E.

Utility & Railroad Engineering Section

Date 6-9-95

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By Rafael Miguel

Manager Public Projects

Date June 6, 1995FORM APPROVED
FENNEMORE CRAIGBy C. Webb-Crocker

General Attorneys, Arizona

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION

Agreement No. 1531-91-ATSF

Agreement Addendum No. 2

Company's Name: The Burlington Northern and Santa Fe Railway Company
Address: 740 E. Carnegie Drive, San Bernardino, CA 92408-3571

The purpose of this addendum is to modify the Company name as stated herein:

WHEREAS: Agreement No. 1531-91-ATSF terms the "RAILROAD" as ATCHISON TOPEKA AND SANTA FE RAILWAY COMPANY.

WHEREAS: Agreement No. 1531-91-ATSF is revised to term the "RAILROAD" as THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY.

THEREFORE: The parties hereto agree that Agreement No. 1531-91-ATSF is hereby amended as shown herein. All other provisions of Agreement No. 1531-91-ATSF shall remain unabrogated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARIZONA DEPARTMENT OF TRANSPORTATION

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By William R. Briscoe

WILLIAM R. BRISCOE, P.E.

Utility & Railroad Engineering Section

Date 3-25-97

By M. W. Amodeo

Vice President and Chief Engineer

Date 3/5/97

ARIZONA DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
UTILITY AND RAILROAD ENGINEERING SERVICES

MASTER
RAILROAD AGREEMENT
With
ATCHISON TOPEKA AND SANTA FE RAILWAY COMPANY
For
FEDERAL AID
Railroad Crossing Projects

Agreement No. 1531-91-ATSF
RAIL/HIGHWAY SAFETY PROGRAM

THIS AGREEMENT by and between ATCHISON TOPEKA AND
SANTA FE RAILWAY COMPANY, a Delaware corporation, herein termed
"RAILROAD," and STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION,
HIGHWAYS DIVISION, herein termed "STATE",

WITNESSETH:

The parties hereto desire to set forth by this
instrument their understanding and agreements with respect to
the installation, at various times, of railroad protective
devices and/or roadway crossing materials with track
rehabilitation, if required, throughout the State of Arizona,
where a roadway crosses the property and tracks of RAILROAD.

AGREEMENT:

NOW THEREFORE, it is mutually agreed as follows:

1. The work to be performed by RAILROAD under this agreement is hereinafter referred to as "PROJECT".
2. RAILROAD agrees to furnish all labor, materials, tools and equipment necessary to install such protective devices including necessary actuating and operating circuits and adequate instrument housing and/or roadway crossing materials with track rehabilitation, if required, upon its property at certain designated grade crossings specified in Exhibit "A" and "B" as supplemented for each additional crossing.
3. It is agreed that the work to be performed by RAILROAD is a part of a Federal-Aid project. Pursuant to the provisions of Federal-Aid Policy Guide Subchapter G Part 646 Subpart B, there is no ascertainable net benefit to RAILROAD, and STATE agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred by RAILROAD in furnishing the materials and performing work of installing of roadway crossing materials, and for ninety percent (90%) of the

Agreement No. 1531-91-ATSF

cost and expense incurred in the furnishing of materials and performing the work of installing railroad protective devices described in Exhibit "A", as supplemented from time to time. Pursuant to A.R.S. Subsection 40-337.02, the remaining ten percent (10%) of the cost of furnishing and installing railroad protective devices shall be billed to, and be the responsibility of, the Arizona Corporation Commission.

4. It is understood and agreed that the STATE is acting solely as an agent for the project sponsor in securing and administering Federal funds for each PROJECT. STATE's liability is expressly limited to the securing and administering of Federal funds and STATE assumes no other liability hereunder for the project sponsor.

5. Following written authorization by STATE, RAILROAD will construct the PROJECT in a good and workmanlike manner in accordance with Exhibit "B", and the latest standards prescribed by the Association of American Railroads and the Manual on Uniform Traffic Control Devices, Part VIII. RAILROAD shall complete the PROJECT within such time as is ordered by the Arizona Corporation Commission in its Opinion and Order. RAILROAD agrees to provide STATE written notification of the commencement and completion of the PROJECT.

6. The work for each PROJECT shall be performed by RAILROAD forces at an agreed sum as supported by the analysis of estimated costs set forth in Exhibit "A". The agreed sum shall be payable in payments as follows:

- a. RAILROAD will order the materials for each PROJECT, and bill the STATE upon receipt, for materials and related costs, as set forth in Exhibit "A".
- b. Unless billed under subparagraph a. RAILROAD may submit monthly bills of at least \$5,000, prepared in satisfactory form, for work performed and material installed.
- c. Upon completion of all work under each PROJECT, RAILROAD shall arrange for a joint close-out inspection of the completed PROJECT. Upon determination by STATE that the work has been completed in accordance with Exhibits "A" and "B", RAILROAD will submit final and complete billing to the STATE, allowing credit for all

amounts received on a progressive basis, showing amount billed the Arizona Corporation Commission. STATE agrees to pay RAILROAD the difference in the final invoice and any previous payments for PROJECT. Any amount which STATE disagrees shall be paid under protest subject to resolution.

- d. All bills will be paid by STATE within sixty (60) days of receipt.

All expenses incurred by RAILROAD for work which STATE is obligated to reimburse RAILROAD for hereunder, including all work incidental to such work but not specifically mentioned herein, shall be subject to the provisions of the Federal-Aid Policy Guide Subchapter B Part 140 Subpart I.

7. Pursuant to A.R.S. Section 35-214, 35-215 and 41-1279.04, the books of RAILROAD shall be open for inspection and audit by authorized representatives of STATE and the Federal Government for a period of not less than five (5) years from the date final payment has been received by RAILROAD.

STATE agrees to pay RAILROAD any sums found to be owing as a result of an audit within sixty (60) days of receipt of the audit by the Utility and Railroad Services of STATE. RAILROAD agrees to reimburse STATE, within sixty (60) days of notification, for any amount STATE disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to STATE under protest subject to resolution.

8. All billings shall contain STATE's project number and agreement number. The bill shall be sent to:

ARIZONA DEPARTMENT OF TRANSPORTATION
Utility & Railroad Engineering Services
205 South 17th Avenue
MAIL Drop 618E
Phoenix, Arizona 85007

9. Once installation of railroad protective devices and roadway crossing material has been completed, RAILROAD shall maintain the railroad protective devices and the crossing material two feet outside of each rail as long as they remain in place. However, RAILROAD shall be entitled to receive any contribution toward the cost of such maintenance as may be now or hereafter made available by means of any law, ordinance, regulation, order, grant or by other means or sources.

Agreement No. 1531-91-ATSF

10. Claims and disputes between STATE and RAILROAD involving sums less than \$100,000 and arising out of the terms of this Agreement relating to work performed, billing, and similar matters, shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

11. In compliance with the regulations of the United States Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix "A", attached hereto and by this reference made a part of this Agreement: providing, however, that Appendix "A" shall be applicable only in those cases where RAILROAD does not perform the work contemplated in this Agreement with its own forces.

12. This Agreement is subject to the budgetary limitations set forth in Arizona Revised Statutes Subsection

28-1823 through 28-1826 inclusive and is further subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

13. STATE and RAILROAD each agrees to be liable to the other party for its own acts of negligence and the negligence of its own employees.

14. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of RAILROAD and the assigns of STATE.

15. RAILROAD is required to comply with Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Agreement.

16. Pursuant to A.R.S. Subsection 38-511, STATE may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of STATE or any of its departments or agencies is, at any time while this Agreement or any extension of it is in effect, an employee of any other party to this Agreement with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year signed by both parties.

ATCHISON TOPEKA &
SANTA FE RAILWAY COMPANY

ARIZONA DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION

Recommended by William R. Brune
Manager, Utility & Railroad Engr.

By Roy V. Ketting
Its MANAGER SPECIAL PROJECTS

By Robert P. Mickelson
Its Deputy STATE ENGINEER

Date December 15, 1992

Date December 22, 1992

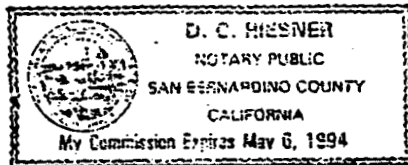
STATE OF CALIFORNIA)
) ss.
COUNTY of LOS ANGELES)

The foregoing instrument was acknowledged before me this 15th day of DECEMBER, 1992, by ROY V. KETTING, III, the MANAGER SPECIAL PROJECTS of ATCHISON TOPEKA & SANTA FE RAILWAY COMPANY, a Delaware corporation, on behalf of the corporation.

My Commission Expires:

D. C. HIESNER
Notary Public

STATE OF ARIZONA)
) ss.
COUNTY of MARICOPA)



The foregoing instrument was acknowledged before me this 23rd day of December, 1992, by ROBERT P. MICKELSON the DEPUTY STATE ENGINEER of the Arizona Department of Transportation.

My Commission Expires:

My Commission Expires May 7, 1996

Heather Price
Notary Public

Agreement No. 1531-91-ATSF

APPENDIX A
(Revised)

II EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of ~~the contractors commitments under this section II-2~~ and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors. Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.